Guardian Industries Corp. *and* International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW. Cases 25–CA–21774 and 25–CA–21843

May 20, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

On September 30, 1993, Administrative Law Judge Karl H. Buschmann issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed a brief in support of the judge's decision, an answering brief, and limited cross-exception, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Guardian Industries Corp., Auburn, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] The General Counsel excepts to the failure of the judge to state the name of the Union in the notice. We have amended the notice accordingly.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT maintain or enforce any rule or policy which discriminatorily prohibits you from posting union-related materials on our bulletin boards that are otherwise available for the general use of employees.

WE WILL NOT threaten you with unemployment or other adverse consequences because you support or assist the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, or any other union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL withdraw and rescind any of our rules or policies which discriminatorily restrict your use of our bulletin boards which are otherwise available for the general use of employees.

GUARDIAN INDUSTRIES CORP.

Joanne C. Krause, Esq., for the General Counsel
Michael R. Maine, Esq. and *Todd M. Nierman, Esq. (Baker & Daniels*), of Indianapolis, Indiana, for the Respondent.

DECISION

STATEMENT OF THE CASE

KARL H. BUSCHMANN, Administrative Law Judge. This case was tried in Auburn, Indiana, on October 26, 1992, on a consolidated complaint which issued on April 30, 1992. The underlying charges were filed on February 12, 1992, in Case 25–CA–21774 and on March 13, 1992, in Case 25–CA–21843 by the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW.

The complaint alleges in substance, that Guardian Industries Corp., the Respondent, violated Section 8(a)(1) of the National Labor Relations Act (the Act) by interrogating its employee about the Union, by threatening employees with discharge or loss of work if they selected the Union, and by denying its employees the right to post union notices on the Company's bulletin boards. In its answer, the Respondent admitted certain jurisdictional allegations of the complaint and denied the substantive allegations of unfair labor practices.

On the record as a whole, including my observation of the witnesses and the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

Jurisdiction

Guardian Industries Corp. is a Delaware corporation with an office and place of business in Northville, Michigan, and at several other locations, including one in Auburn, Michigan, where it is engaged in the business of manufacturing glass for automobiles. With sales and shipments of products in excess of $50,000 from its Auburn, Indiana facility directly to customers outside the State of Indiana, the Company is admittedly an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Union is admittedly a labor organization within the meaning of Section 2(5) of the Act.

Facts

Guardian Industries Corp. in Auburn, Indiana, employs between 600 and 650 employees working in four shifts producing windshields for cars (Tr. 11–13). The supervisory hierarchy includes the plant manager, Mike Panther, and the personnel manager, Mike Farrell, 3 superintendents, including Robert Tracey and Kevin Althouse, as well as 33 or 34 supervisors, including Marcia Osterhout (Tr. 14).

According to the complaint, Farrell and Althouse were involved in denying the employees access to the Company's bulletin boards and Osterhout interrogated and threatened a certain employee about his union involvement.

Since November 1991, the Union has been trying to organize the Company's employees in Auburn. The Company, responding to the union drive, exceeded the proper bounds of conduct in several instances. In this regard, the record contains the testimony of a former employee, George Kinsey, to the effect that in December 1991, Marcia Osterhout, a supervisor, unlawfully interrogated him about the Union and on another occasion threatened employees by stating that if the Union were selected by the employees, they would be in the unemployment line. Osterhout testified that she did not interrogate the employee nor threaten anyone about the unemployment line.

The more important issue and the most extensive record evidence in this case deals with the employees' right to post a union notice on the Company's bulletin boards. In this regard, the record shows that Guardian Industries maintains three bulletin boards at its plant, one in each of the two break rooms and one in the main office (Tr. 14–15). They are glass enclosed and locked. In his capacity as personnel manager; Michael Farrell administers the Company's policy regarding its bulletin boards (Tr. 15). The Company's policy appears in the following excerpt from the company policy manual (G.C. Exh. 2, Tr. 16–17, 148):

> BULLETIN BOARDS
>
> There is one main bulletin board area located inside the lunchroom. This will be utilized to keep you current on items of interest. If you wish to utilize a section of the board to sell personal items you must submit the following information to the plant manager's secretary.
>
> 1. A description of the item(s) including cost.
> 2. Your name.
> 3. Your home telephone number.
>
> All posted items in the bulletin board area must be approved by the Plant Manager. This also applies to any material posted in any other area of the plant. Work related information may be posted with approval from a Superintendent.

According to Farrell, ''[p]art of all new employee orientation includes going over work rules. Bulletin boards and their use as a communication device is gone over in detail during orientation'' (Tr. 143). When asked what items are usually posted pursuant to this policy, Farrell testified as follows (Tr. 17):

> The items that are approved for posting on the bulletin board are work related items or items of general interest to the plant. Typically, things such as, vacation scheduling procedures, visitations to the plant by customers, quality type items, new business type items, general plant information.

Farrell, who monitors compliance with company policy, explained it as follows as applied to nonwork-related items: ''We also permit employees to submit for review and approval swap and shop type items for sale'' (Tr. 18). If management receives a request to post a notice, the Company employs the following procedure (Tr. 18):

> An employee is requested to submit in writing the item or items involved and we reduce all approved items to a three by five typed card and then the card is posted. No names are permitted. Telephone numbers only.

In the past, the Respondent has rejected requests to use the bulletin board because of its policy against solicitation, as explained by Farrell as follows (Tr. 145):

> We've had requests from the Red Cross to post notices about bloodmobile schedules. We've not done that.
>
> We recently acquired an affiliation with a credit union for employees' use. The credit union asked if they could post or solicit on the property. We did not allow that. . . .
>
> Requests from Big Brothers and Big Sisters here in town. We didn't allow that.

The Respondent has also rejected several requests by employees to post union notices. Union organizers who solicited employees for the Union in the usual fashion by wearing union buttons, UAW hats, and by passing out union leaflets, announced the time and place of union meetings by distributing flyers in nonwork areas, like restrooms, locker rooms, and by inserting leaflets in employees' lockers (Tr. 85). However, many employees felt that the method of announcing union meetings left them uninformed (Tr. 63, 95–96). Employees Jeff Purdy, Lori Custer, and Lee Bard accordingly decided to approach management with a request to post a union notice announcing a union meeting on February 11, 1992 (G.C. Exh. 3, Tr. 62, 96). On their day off in February, 1992, the three employees went to the front office to meet with Farrell or any other member of management. Farrell refused to meet with all three employees, but he listened to Lori Custer who, on behalf of the other employees, showed him the union flyer and requested that it be posted on the Company's bulletin boards (Tr. 69, 99). Farrell replied that he would respond to their request sometime later that day. Farrell, however, did not respond and the Respondent did not post the notice (Tr. 70). According to Farrell's testimony, a decision was made by several members of management not to post the notice for the following reason (Tr. 22):

> We did not—the consensus was that this was not in keeping with either the spirit or the letter of our posting policy. Certainly we discussed pros and cons and concluded that it was not proper.

Another employee, Daryl Brandenburg, made another effort to post a union notice on the bulletin boards. He testified

that fewer and fewer people attended the meetings because it became increasingly difficult to distribute union leaflets to the 650 employees (Tr. 115–116). Brandenburg approached his supervisor, Kerry Monnier, sometime prior to the February 11, 1992 union meeting and requested that the union notice be posted in the bulletin boards (Tr. 117–118). On the following day, Monnier informed Brandenburg that the Company would not post it, because ''it was politically motivated and anything with a charity's name or anything like that they would not post'' (Tr. 118). Brandenburg repeated his request to post a union notice for the next union meeting scheduled for March 31, 1992 (G.C. Exh. 4, Tr. 119–120). Again, Monnier informed Brandenburg that following his consultation with Farrell, the request was denied. Brandenburg finally went to Kevin Althouse, a superintendent, with his request and suggested that the information be put on a 3-by-5 inch card. However, Althouse also rejected the employee's request (Tr. 121).

The Respondent has admitted that ''Guardian refused to post any notices announcing the UAW meetings'' (R. Br. p. 5).

Discussion

According to the Respondent, Guardian was within its rights in prohibiting employees from posting UAW notices on Guardian bulletin boards, because its policy was not discriminatory. The General Counsel argues that the Respondent, having permitted its bulletin boards to be used for nonwork related items, may not deny employees the right to post union related items. Both parties cite the Board's decisions in *Honeywell, Inc.*, 262 NLRB 1402 (1982), and *St. Anthony's Hospital*, 292 NLRB 1304 (1989). The applicable legal principle stated in *Honeywell* and restated in *St. Anthony's Hospital* are, according to the Board, simply stated and well established. In agreement with the Respondent's position, these decisions recognize that ''there is no statutory right of employees or a union to use an employer's bulletin board,'' but the employer may not discriminate against the posting of union notices if it otherwise permits the posting of personal items. The Board stated as follows:

> However, where an employer permits its employees to utilize its bulletin boards for the posting of notices relating to personal items such as social or religious affairs, sales of personal property, cards, thank you notices, articles, and cartoons, commercial notices and advertisements, or, in general, any nonwork related matters, it may not ''validly discriminate against notices of union meetings which employees also posted.'' Moreover, in cases such as these an employer's motivation, no matter how well meant, is irrelevant. [Footnotes omitted.]

The record is clear and there is no dispute that the Respondent permitted employees the use of the bulletin boards for notices relating to general items, such as the sale of personal items or what is referred to as ''shop and swap type items for sale.'' Permitting this practice on the one hand, and denying union notices on the other, would amount to a discriminatory use of the bulletin boards. For example, the Respondent states that its policy permitted the ''sale of personal items on 3-by-5 inch cards, occasionally accompanied by a photograph.'' (R. Br. p. 8). The record shows that the Respondent also rejected an employee's suggestion that the union notice be reduced to a 3-by-5 inch card. Moreover, the record shows that the Respondent has from time to time permitted other personal uses of its bulletin boards, such as the posting of wedding invitations, a thank you note, information about a day care center and a notice for a charitable event (Tr. 31, 59, 91–94, 113–114). Even though those incidents may have occurred a year or two prior to the union campaign, it is clear that the bulletin boards were used for various types of personal notices by its employees. Under these circumstances, the Respondent's policy prohibiting the postings of union related material was a denial of the employees' Section 7 rights in violation of Section 8(a)(1) of the Act.

With respect to the additional allegations that the Respondent violated Section 8(a)(1) of the Act by unlawful interrogation and threats, the record shows that Supervisor Osterhout had conversations in December 1991 with Kinsey about the Union. Kinsey reported late for work on that day and was confronted by Osterhout, who, according to Kinsey, ''jumped all over'' him. He testified as follows (Tr. 27): ''She asked me what I thought they [Union] would do for us. She said they wouldn't do nothing for us.'' Osterhout denied making any reference to the Union during the conversation with Kinsey (Tr. 173). She testified that Kinsey was tardy that day and that he had a serious attendance problem. When she inquired where he had been, he replied, ''It was none of [her] 'god damn business' where he had been'' (Tr. 173). Kinsey conceded that he made such a statement because of a personal problem (Tr. 50). According to Osterhout, Kinsey also said that she would not be able to speak like that to her if the plant were unionized.

I credit Kinsey to the extent that Osterhout made the statement about the Union and that it was made after he told her that she would not be able to talk to her like that in the presence of the Union. Under these circumstances, I find that Osterhout's remark was in the nature of a rhetorical question, more as a retort to Kinsey's remark about the Union than a form of interrogation. Furthermore, in the light of Kinsey's intemperate response to a legitimate inquiry where he had been, I find a total absence of coercion or intimidation. I accordingly find that the Respondent's statement did not amount to an act of unlawful interrogation. *Rossmore House*, 269 NLRB 1176 (1984).

Kinsey testified about a second conversation with Osterhout in the presence of another employee, Mark George, in December 1991 (Tr. 29): ''I had a UAW pin on and she told me if we got a union in there we'd be in the unemployment line'' (Tr. 29). Again Osterhout denied making the statement, she recalled making a remark to the effect that she would no longer work at the Company because she did not want to work in a union environment'' (Tr. 174–75).

I have credited Kinsey's recollection of the conversation, because his demeanor impressed me as more certain and unequivocal; and I find that a supervisor's statement threatening employees with the loss of jobs because of the Union is a threat in violation of Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By promulgating, maintaining, and enforcing a policy which prohibits employees from posting union-related materials on bulletin boards that are available for personal use by employees, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. By threatening employees with unemployment, the Respondent violated Section 8(a)(1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent violated Section 8(a)(1) of the Act, I recommend an order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act, and that the Respondent rescind its unlawful bulletin board policy insofar as that policy restricts employees' posting of union-related materials on bulletin boards that are available for personal use by employees.

On these findings and conclusions of law and on the entire record, I issue the following recommended[1]

ORDER

The Respondent, Guardian Industries Corp., Auburn, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining or enforcing a policy which discriminatorily prohibits its employees from posting union-related materials on bulletin boards which are otherwise available for personal use by employees.

(b) Prohibiting its employees from posting union-related materials on bulletin boards which are otherwise available for personal use by employees.

(c) Threatening employees with unemployment or other adverse circumstances because of the Union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw and rescind any rules or policies which discriminatorily restrict employees' use of Respondent's bulletin boards which are otherwise available for general use by employees.

(b) Post at each of its facilities in Auburn, Indiana, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''